Document #4572

3/28/85

Document #4572

BOSTON REDEVELOPMENT AUTHORITY

September 27, 1984

Revised March 28, 1985

DEVELOPMENT PLAN
and
DEVELOPMENT IMPACT PROJECT PLAN
for
PLANNED FOR DEVELOPMENT AREA NO. 17
Bounded by Berkeley Street, Boylston Street,
Clarendon Street and St. James Avenue, Boston Proper

Joint Venture of
New England Mutual Life Insurance Company
and
Gerald D. Hines Interests, Inc.

Developer: A joint venture of designees of New England Mutual Life Insurance Company and Gerald D. Hines Interests, Inc.

Architect: John Burgee Architects with Philip Johnson, New York, New York, or such associate architects as may be designated by the developer.

Location and Description of Site: A certain parcel of land bounded by Berkeley, Boylston, and Clarendon Streets and St. James Avenue, and containing 137,074 square feet, more or less, described in Exhibit I attached hereto, together with the fee title to the center lines of Berkeley Street, St. James Avenue and Clarendon Street, the discontinued portions of which are to be occupied by the foundation and possibly underground structure of the proposed development.

General Description of Proposed Development: The project will involve the construction of approximately 1,300,000 square feet of office and retail/commercial space in a building with twin office structures rising from a six-story low-rise base structure which covers the entire block except for two courtyards facing Boylston Street. The retail/commercial space will occupy the ground and second stories. Parking for approximately 1,000 vehicles will be provided on three levels below grade (625 public parking spaces and 375 tenant parking spaces).

Projected Number of Employees: It is anticipated that the project will generate approximately 3,000 construction-related jobs and approximately 5,000 permanent office and commercial jobs.

Development Impact Project Exaction: As required under Section 26-3 of the Boston Zoning Code, the developer will enter into a Development Impact Project Exaction Agreement with the Boston Redevelopment Authority and the Neighborhood Housing Trust, or if such Trust has not been established at the time of execution of such Agreement, with the Boston Redevelopment Authority acting on behalf of said Trust. The Development Impact Project Exaction shall be made as a Housing Payment Exaction, or as a Housing Creation Exaction which shall contribute to the creation of housing units for occupancy exclusively by low and moderate income residents of the City of Boston at a cost at least equal to the amount of the Housing Payment Exaction and under the conditions specified in said Agreement. If the developer elects to satisfy its exaction responsibility with respect to each component of the project through money payments, payments to said Trust or fiduciary shall be made in twelve (12) equal annual installments, the first installment due upon the first to occur of (i) the issuance of a certificate of occupancy for such component or (ii) twenty-four (24) months after the issuance of a building permit for such component. The annual payment shall be one-twelfth of $5.00 per square foot of gross floor area. The exaction will approximate a total of $6,000,000 for the project based upon a gross floor area of 1,300,000 square feet. If a building permit is not granted for any part of such component, or if construction of any part of such component is abandoned prior to the commencement of substantial construction (as defined in the Sale and Construction Agreement) after a building permit is obtained, or if for any reason a building permit for a component has lapsed prior to the commencement of substantial construction, then the developer shall have no responsibility for any Development Impact Project Exaction with respect to such component. (The foregoing shall apply to the eastern component notwithstanding that all or any portion of the eastern component Development Impact Project Exaction may have accrued prior to such event.)

Construction Schedule: Although the project will be developed in a single, continuous, sequential phase, either of the western or eastern components of the project may be financed independently of the other component and therefore may be considered as a separate zoning lot capable of being conveyed as such. The subdivision of the site which may be required in connection with such financing shall not require an amendment to this Planned Development Area/ Development Impact Project Plan (PDA/DIP Plan) provided that (i) the floor area ratio for the entire project will not exceed 9.5 and (ii) no exceptions are required from sections of the Boston Zoning Code not set forth in this Plan.

Permitted Uses: The uses to be permitted are listed in Exhibit II.

Proposed Location and Appearance of Structure: The location and appearance of the structure shall generally conform with the design development drawings prepared by John Burgee Architects with Philip Johnson listed in Exhibit III hereto. These plans are subject to further design review and refinement and are hereby incorporated into this PDA/DIP Plan.

Open Spaces and Landscaping: There are to be two courtyards fronting on Boylston Street, and sidewalk trees on Boylston Street, Berkeley Street, Clarendon Street, and St. James Avenue, both in general conformity with Drawing Nos. 1 and 5.

Density: The floor area ratio for the project shall not exceed 9.5. A table of floor area ratio calculations is attached as Exhibit IV.

Proposed Traffic Circulation: Vehicular access and egress for the site shall be provided by the four existing streets bounding the site. Access to the below-grade parking shall be from Clarendon Street and St. James Avenue; egress shall be to Berkeley Street and St. James Avenue; access and egress for the loading bays shall be from St. James Avenue.

Pedestrian access to the site will be primarily by the main entrance on Boylston Street. Pedestrian ways will connect all parts of the project with the surrounding streets. The twin lobbies of the office structures will be directly accessible from St. James Avenue.

Parking and Loading Facilities: Approximately 1,000 off-street parking spaces (including 625 public parking spaces and 375 tenant parking spaces) will be provided on three levels below grade. No less than six loading bays will be provided along St. James Avenue. The parking and loading facilities will be in general conformity with the facilities shown on Drawing Nos. 2 through 5.

Access to Public Transportation: The site is presently served by the MBTA Green Line at the Copley Square and Arlington Street stops (respectively, one block to the west and one block to the east of the site). An MBTA Orange Line stop to be located at the site of the Back Bay railroad station is presently under construction and is scheduled for completion in late 1986 or early 1987. This stop is located at the corner of Dartmouth and Buckingham Streets, approximately three blocks from the St. James Avenue side of the site. Commuter and inter-city rail service is provided to the site through a stop at the Back Bay railway station. Currently, only trains serving the Framingham branch pass through the

station; however, when the Southwest Corridor construction is completed, normal service to the Stoughton and Franklin branches is expected to be restored. Several MBTA bus routes terminate with a block of the site at Copley Square: Bus Route 302 (Watertown/Copley Express), Bus Route 310 (Needham/ Copley Express), Bus Route 315 (Roslindale/Copley Express), Bus Route 9 (City Point/Copley), and Bus Route 68 (Boston City Hospital/Copley) and by private commuter bus lines.

Proposed Dimensions of Structure: The dimensions of the structure will generally conform with the drawings listed in Exhibit III of this PDA/DIP Plan. Specifically, the building heights of the twin office structures shall not exceed 330 feet as measured to the top of the parapet (except for certain decorative features and a rounded mechanical penthouse on each tower structure), and the height of the six-story low-rise structure shall not exceed 87 feet (except for certain decorative features).

Design Review: Materials and treatment of the building facade, landscaping design, exterior signage and other items as specified in the Authority's "Design Review Procedures" will be subject to the Boston Redevelopment Authority's design review process.

Existing Zoning: The site is located in a B-8 zoning district and a restricted parking district.

Zoning Exceptions Required:

Section	Required in B-8 Zoning District	Provided for Project (approximate)
8-7 Conditional uses listed in Exhibit II*	-	-
15-1 Floor Area Ratio	8.0	9.5
21-1, 21-2(a) and(b) Setback of Parapet		

*Exception required.

Front		
towers	82 feet	133 feet
low-rise	82 feet	10 feet*
Side		
(Clarendon)		
tower	17.5 feet	31 feet
low-rise	0 feet	3 feet
(Berkeley)		
tower	7.5 feet	33 feet
low-rise	0 feet	4 feet
(between components)		
towers	47.5 feet	less than 47.5 feet for each tower*
low-rise		0 feet
Rear		
towers	80 feet	4.5 feet*
low-rise	98 feet	4.5 feet*
24-1 Off-Street Loading	13	6*

Exhibit I

Boylston/Berkeley/St. James/Clarendon Project
PDA/DIP Plan

Description of Premises

That certain parcel of land with the improvements thereon situated in Boston, Suffolk County, Massachusetts, bounded and described as follows:

NORTHERLY by Boylston Street, 548.17 feet;
EASTERLY by Berkeley Street, 249.96 feet;
SOUTHERLY by St. James Avenue, 548.06 feet; and
WESTERLY by Clarendon Street, 249.98 feet.

Containing, by estimation, about 137,074 square feet of land.

Also including the fee title to that portion of Providence Street included within such parcel and also including the fee title to the center lines of Berkeley Street, St. James Avenue and Clarendon Street, portions of which may be or have been discontinued below grade.

Exhibit II

Boylston/Berkeley/St. James/Clarendon Project
PDA/DIP Plan

Permitted Uses

Allowed Under Zoning Code:

30	Private Club (including quarters of fraternal organizations) operated for members only.
34	Store primarily serving the retail business needs of the residents of the neighborhood.
35	Department store, furniture store, general merchandise mart, or other store serving the general retail business needs of a major part of the city, including accessory storage.
37	Lunch room, restaurant, cafeteria or other place for the service or sale of food or drink for on-premises consumption.
38	Place for sale and consumption of food and beverages ... providing dancing or entertainment or both.
39	Office of accountant, architect, attorney, dentist, physician or other professional person.
39A	Clinic not accessory to a main use.
40	Real estate, insurance or other agency office.
41	Office building, post office, bank or similar establishment.
43	Barber shop; beauty shop; shoe repair shop; self-service laundry; pick-up and delivery station of laundry or dry cleaner, or similar use.
44	Tailor shop; hand laundry; dry-cleaning shop.
46	Caterer's establishment; photographer's studio...radio and television repair shop.

48 Research laboratory; radio or television studio.

Conditional Under Zoning Code:

34 Store primarily serving the retail business needs of the residents of the neighborhood, where merchandise is sold or displayed out of doors on the premises.

35 Department store, furniture store, general merchandise mart, or other store serving the general retail business needs of a major part of the city, including accessory storage, where merchandise is sold or displayed out of doors on the premises.

36A Sale over the counter...of on-premises prepared food or drink for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out.

50 Drive-in bank, restaurant, or cafeteria or other place for the service or sale of on-premises or off-premises consumption, providing off-street parking facilities for its customers while doing business on the premises.

59 Parking garage.

61 Rental agency storing, servicing, and/or washing rental motor vehicles and trailers.

68 Repair of various products, including, without limitation:

Cameras or other photographic equipment; electronic components and supplies; leather products, including shoes, machine belting, and the like; optical equipment, clocks, or similar precision instruments.

71 Any use on a lot adjacent to, or across the street from, but in the same district as, a lawful use to which it is ancillary and ordinarily incident and for which it would be a lawful accessory use if it

were on the same lot; any such use on such a lot in another district.

72 As an accessory use, a garage or parking space for occupants, employees, customers, students and visitors.

Exhibit III

Boylston/Berkeley/St. James/Clarendon Project
PDA/DIP Plan

Plan List

Drawing No.	Title	Date
1	Urban Context	January 28, 1985
2	P-3 Level	January 28, 1985
3	P-2 Level	January 28, 1985
4	P-1 Level	January 28, 1985
5	Ground Floor	January 28, 1985
6	Second Floor	January 28, 1985
7	3rd Floor Plan	January 28, 1985
8	Floors 4-6	January 28, 1985
9	Floors 7-18	January 28, 1985
10	Floors 19-25	January 28, 1985
11	Roof Plan	January 28, 1985
12	Boylston Street Elevation	January 28, 1985
13	St. James Street Elevation	January 28, 1985
14	Clarendon Street Elevation	January 28, 1985
15	Building Longitudinal Section	January 28, 1985
16	Building Cross Section	January 28, 1985
17	Tower Eleation	January 28, 1985
18	Section Details	January 28, 1985
19	Typical Tower Plan Details	January 28, 1985
20	P-2 Level Framing	January 28, 1985
21	Ground Floor Framing	January 16, 1985
22	Second Floor Framing	January 28, 1985
23	4 thru 6 Floor Framing 1/16"	January 28, 1985
24	4 thru 6 Floor Framing 1/8"	January 28, 1985
25	8 thru 25 Floor Framing	January 28, 1985
26	Typical Low-Rise Floor	January 28, 1985
27	Typical Tower Floor	January 28, 1985
28	Boylston Street Low-Rise Elevation	March 1, 1985
29	St. James Avenue Elevation	March 1, 1985
30	Clarendon Low-Rise Elevation	March 1, 1985
31	Exterior Column Plan Details at Ground Floor	March 1, 1985
32	Curtainwall Sections	March 1, 1985

Exhibit IV

Boylston/Berkeley/St. James/Clarendon Project
PDA/DIP Plan

Floor Area Ratio Calculations

	GROSS FLOOR AREA*	FLOOR AREA EXCLUSIONS*	FLOOR AREA FOR FAR PURPOSES*
Ground Floor	84,700.8	676.0	84,024.8
Floor 2	70.228.6	3,524.2	66,704.4
Floor 3	88,037.12	4,058.9	83,978.22
Floor 4	94,039.12	4,058.9	89,980.22
Floor 5	94,039.12	4,058.9	89,980.22
Floor 6	94,039.12	4,058.9	89,980.22
PODIUM TOTAL:	525,083.88	20,435.8	504,648.08
Floor 7	44,448.0	3,729.0	40,719.0
Floor 8	44,136.0	3,729.0	40,407.0
Floor 9	44,448.0	3,729.0	40,719.0
Floor 10	44,136.0	3,111.0	41,025.0
Floor 11	44,448.0	3,111.0	41,337.0
Floor 12	44,136.0	3,111.0	41,025.0
Floor 13	44,448.0	3,111.0	41,337.0
Floor 14	44,136.0	3,111.0	41,025.0
Floor 15	44,448.0	3,111.0	41,337.0
Floor 16	44,136.0	3,111.0	41,025.0
Floor 17	44,448.0	3,111.0	41,337.0
Floor 18	44,136.0	3,111.0	41,025.0
Floor 19	44,448.0	3,111.0	41,337.0
Floor 20	44,136.0	2,003.0	42,133.0
Floor 21	44,448.0	2,003.0	42,445.0
Floor 22	44,136.0	2,003.0	42,133.0
Floor 23	44,448.0	2,003.0	42,445.0
Floor 24	44,136.0	2,003.0	42,133.0
Floor 25	44,448.0	2,003.0	42,445.0
TOWER TOTAL:	841,704.0	54,315.0	787,389.0
BUILDING TOTAL:	1,366,787.88	74,750.8	1,292,037.08

Lot Area = 137,074 FAR = $\frac{1,292,037.08}{137,074}$ = approximately 9.5

*Areas shown are approximations.

DEVELOPMENT IMPACT PROJECT AGREEMENT

for

Planned for Development Area No. 17

bounded by Berkeley Street, Boylston Street,

Clarendon Street and St. James Avenue, Boston Proper

THIS AGREEMENT dated as of , 1985, among the BOSTON REDEVELOPMENT AUTHORITY ("BRA"), the NEIGHBORHOOD HOUSING TRUST hereafter to be created, and the joint venture of NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY, a Massachusetts corporation and GERALD D. HINES INTERESTS, INC., a Texas corporation ("Joint Venture").

W I T N E S S E T H:

WHEREAS, the Joint Venture proposes to construct a mixed-use development project including office, retail, and commercial uses and a below-grade parking facility ("Project") to be located on premises bounded by Berkeley Street, Boylston Street, Clarendon Street, and St. James Avenue, Ward 3, City Proper ("Premises ");

WHEREAS, the Premises include the St. James Avenue Garage site and related land including discontinued street areas presently owned by the City of Boston;

WHEREAS, the Joint Venture, the City of Boston acting by and through its Public Facilities Commission, and the BRA have entered into a Sale and Construction Agreement dated , 1984 ("Sale and Construction Agreement") and Section 1001(b) of the Sale and Construction Agreement

contemplates the execution of this Agreement (terms and phrases used herein and defined in the Sale and Construction Agreement shall have the definitions attributed thereto in the Sale and Construction Agreement);

WHEREAS, the BRA has tentatively designated the Joint Venture as redeveloper of the St. James Avenue Garage site and related land and the City Council of the City of Boston has transferred the care, custody, management, and control of the St. James Avenue Garage and related land to the Public Facilities Commission for conveyance to the Joint Venture pursuant to votes taken by the BRA on December 8, 1983, the Real Property Board on December 9, 1983, the Public Facilities Commission on December 12, 1983, and August 23, 1984, and the City Council on April 18, 1984, and the Sale and Construction Agreement among the City of Boston, BRA and Joint Venture approved by the Public Facilities Commission on August 23, 1984, and the BRA on August 29, 1984;

WHEREAS, the terms and conditions of the Joint Venture's tentative designation as redeveloper provide that the Project shall comply with the "linkage" policies of the City of Boston;

WHEREAS, the linkage policies of the City of Boston have been incorporated in Article 26 of the Boston Zoning Code (the "Zoning Code") by Text Amendment No. 73, which became effective on December 29, 1983;

WHEREAS, in order to facilitate the development of the Project, the Joint Venture has applied to the BRA for designation of the Premises as a Planned Development Area ("PDA") pursuant to Section 3-1A of the Zoning Code;

WHEREAS, pursuant to the Joint Venture's application for designation of the Premises as a PDA and in accordance with Article 26 of the Zoning Code, the BRA has approved on March 28, 1985, after notice and public hearing held on September 27, 1984, a PDA/DIP Plan authorizing exceptions under

Section 6A-1 of the Zoning Code from those provisions of the Zoning Code as are required for development of the Project and has petitioned the Boston Zoning Commission to change the zoning of the Premises from a B-8 to a B-8-D zoning district; and

WHEREAS, the Neighborhood Housing Trust referred to in Article 26 of the Zoning Code, as amended, has not yet been created;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. The Joint Venture will cause the Premises to be developed in accordance with the PDA/DIP Plan and the terms of the Sale and Construction Agreement.

2. The Joint Venture shall be responsible, in accordance with the terms of this Agreement, for a Development Impact Project Exaction, as such term is presently defined in Section 26-2(3) of the Zoning Code, in the amounts set forth in Section 3 of this Agreement. The Joint Venture may, at its option, satisfy its obligation for the Development Impact Project Exaction, in whole or in part, by payment in accordance with Section 5 of this Agreement, or by contributing to the creation of housing units for occupancy exclusively by low and moderate income residents of the City of Boston in accordance with Section 6 of this Agreement.

3. Although the Premises will be developed in a single, continuous, sequential phase, it is anticipated that construction of the western component ("Western Component") will commence and a building permit will be issued approximately twenty-seven (27) months before the commencement of construction of and issuance of a building permit for the eastern component ("Eastern Component"). The Development Impact Project Exaction shall be paid separately for the Western Component and the Eastern Component. Liability arising

under this Agreement in connection with a particular component shall be limited to the interest of the Joint Venture in such component. In illustration, but not in limitation of the foregoing, if separate successors to the Joint Venture own each of the Western and Eastern Components in accordance with and as contemplated by the Sale and Construction Agreement, then the owner of the Western Component shall have no liability for the Development Impact Project Exaction for the Eastern Component and vice versa. The Development Impact Project Exaction for the Western Component, containing approximately 725,000 square feet, shall be Three Million One Hundred Twenty-Five Thousand Dollars ($3,125,000). The Development Impact Project Exaction for the Eastern Component, containing approximately 575,000 square feet, shall be Two Million Eight Hundred Seventy-Five Thousand Dollars ($2,875,000). The parties acknowledge that the amounts of the Development Impact Project Exaction stated above have been based upon areas for the Components stated in the Sale and Construction Agreement. If the Gross Floor Area, as defined in Section 2-1(21) of the Zoning Code and as certified by the Project Architect, for either or both of the Components differs from the schematic building area for such Component set forth in the Sale and Construction Agreement, this Agreement shall be amended to adjust the amount of the Development Impact Project Exaction in accordance with Article 26 of the Boston Zoning Code.

4. The "Payment Date" for each Component shall be the earlier of the issuance of a Certificate of Occupancy or twenty-four (24) months after the granting of a Building Permit with respect to such Component. If a Building Permit is not granted for any part of such Component, or if construction of any part of such Component is abandoned prior to the commencement of substantial construction (as defined in the Sale and Construction Agreement) after a Building Permit is obtained, or if for any reason a Building Permit for

a Component has lapsed prior to the commencement of substantial construction, then the Joint Venture shall have no responsibility for any Development Impact Project Exaction with respect to such Component. (The foregoing shall apply to the Eastern Component notwithstanding that all or any portion of the Eastern Component Development Impact Project Exaction may have accrued prior to such event.)

5. If the Joint Venture shall elect to satisfy the responsibility for the Development Impact Project Exaction by money payments for either or both of the Components, then the Development Impact Project Exaction shall be paid to the City of Boston acting by and through the Neighborhood Housing Trust, or if such Trust has not been created, then to the BRA in twelve (12) equal annual payments.

With respect to the Western Component, the first installment of the Development Impact Project Exaction shall be due and payable on the Payment Date for the Western Component, and subsequent installments shall be due and payable without interest on the following eleven (11) anniversary dates of the Payment Date for the Western Component, all payments to be made where and otherwise as instructed by the BRA.

With respect to the Eastern Component, the first such installment of the Development Impact Project Exaction shall accrue on the earlier of the Payment Date for the Eastern Component or four (4) years after the Condition Date (as defined in the Sale and Construction Agreement) and subsequent installments shall accrue on the following eleven (11) anniversaries thereof. Notwithstanding the accrual of such installments (together with interest as provided below), such amounts shall not be payable until the Payment Date for the Eastern Component, at which time all accrued installments and interest accrued thereon shall be due and payable. Installments accruing on or after

the Payment Date for the Eastern Component shall be due and payable as and when accrued, without interest. Accrued installments shall accrue simple interest through the Payment Date for the Eastern Component at rates determined from time to time as being equal to the lowest interest rate payable, from time to time, by the City of Boston on any borrowed funds. Notwithstanding the foregoing, the Joint Venture shall receive a credit against any interest due on installments accrued before the Payment Date for the Eastern Component in a sum equal to the amount by which the Joint Venture's contribution to the fund for the redesign of Copley Square exceeds $300,000.00.

6. If the Joint Venture shall elect to contribute to the creation of housing units for occupancy exclusively by low and moderate income residents of the City of Boston with respect to either or both of the Components, the Joint Venture shall submit a proposal in writing to the BRA on or before the Payment Date for the Component in question, describing the number, location, cost, and design of the housing units. The proposal shall be subject to approval by the BRA after public notice and hearing.

7. Any payments made by the Joint Venture pursuant to Section 5, and the cost of any contribution to the creation of housing units by the Joint Venture pursuant to Section 6, shall be credited against any amounts due in connection with the particular Component to the Neighborhood Housing Trust on account of any neighborhood impact excise which may be assessed by the City of Boston.

8. The BRA agrees that the Joint Venture and its successors in interest shall be liable for breaches of obligations under this Agreement with respect to a particular Component only while the Joint Venture or any successor in interest, as the case may be, is owner of the Component in question. The BRA further agrees to look solely to the interest in the Component

in question of the Joint Venture or its successors, as the case may be, for any claim against the Joint Venture or any successor arising under this Agreement in connection with such Component. Neither the Joint Venture nor any trustee, beneficiary, partner, manager, agent, or employee of the Joint Venture (or its successors and assigns) shall ever be personally or individually liable; nor shall it or they ever be answerable or liable in any equitable proceeding or order beyond the extent of its or their interest in the Project.

9. The BRA hereby agrees that, subject to recalculation provided in Section 3 of this Agreement, any recalculation of the rate of the Housing Payment Exaction as set forth in Section 26-3(2)(c) of the Zoning Code and otherwise shall not in any way increase the Housing Payment Exaction set forth in this Agreement.

10. The BRA acknowledges that by the signing of this Agreement, the Joint Venture will have satisfied the requirements of Section 26-3(2) of the Zoning Code insofar as satisfaction of the requirements of that Section is a precondition to the granting, allowing, or adopting of a variance, conditional use permit, exception, or zoning map or text amendment with respect to the Joint Venture's development of the Premises.

11. If the parties desire hereafter to amend this Agreement, such agreement shall be written and executed by the parties hereto.

12. This Agreement shall be considered under Massachusetts law, sets forth the entire agreement among the parties, may be amended or modified only by a writing signed by all parties, and is binding upon and inures to the benefit of the parties and their successors, assigns, and legal representatives, notwithstanding any subsequent amendment or repeal (or court decision having the effect of amendment or repeal) to or of the "linkage policies" of the City as incorporated in Article 26 of the Boston Zoning Code.

13. The Joint Venture will formulate a Voluntary Employment Opportunity Plan which will provide for the Joint venture's good faith efforts to achieve a goal that 50% of the employment opportunitites created by the Project will be made available to Boston residents.

14. It is specifically agreed by the parties that this Agreement and the Sale and Construction Agreement are intended to supplement each other. However, where ambiguities or inconsistencies exist, the provisions of the Sale and Construction Agreement shall prevail and the terms of this Agreement shall, to the extent necessary, be of no effect.

BOSTON REDEVELOPMENT AUTHORITY

By:

_____

Stephen Coyle, Director
Hereunto duly authorized

NEW ENGLAND MUTUAL LIFE
INSURANCE COMPANY

By: Copley Real Estate Advisors, Inc.,
Asset Manager and Advisor,
hereunto duly authorized

By: _____

By: _____

GERALD D. HINES INTERESTS, INC.

By: _____

By: _____

MEMORANDUM MARCH 28, 1985

TO: BOSTON REDEVELOPMENT AUTHORITY
AND STEPHEN COYLE, DIRECTOR

FROM: MARC WEBB, ASSISTANT DIRECTOR, PLANNING AND ZONING
SUSAN ALLEN, ASSISTANT DIRECTOR, DEVELOPMENT AND URBAN DESIGN
MITCHELL FISCHMAN, SENIOR PROJECT COORDINATOR, BACK BAY

SUBJECT: APPROVAL OF DEVELOPMENT PLAN AND DEVELOPMENT IMPACT PROJECT PLAN FOR PLANNED DEVELOPMENT AREA NO. 17, BOUNDED BY BOYLSTON, CLARENDON AND BERKELEY STREETS AND ST. JAMES AVENUE

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On December 8, 1983, the Boston Redevelopment Authority recommended to the City of Boston, acting by and through the Public Facilities Commission, the tentative designation of the Joint Venture of New England Mutual Life Insurance Company and Gerald D. Hines Interests, Inc. as redeveloper of the City-owned St. James Avenue Garage site and the portion of Providence Street between Berkeley and Clarendon Streets, plus adjacent private land areas along Boylston Street, subject to certain terms and conditions.

The City Council of the City of Boston has transferred the care, custody, management and control of the St. James Garage and related land to the Public Facilities Commission for conveyance to the Joint Venture pursuant to votes taken by the Real Property Board on December 9, 1983, the Public Facilities Commission on December 12, 1983, August 23, 1984 and November 29, 1984, and the City Council on April 18, 1984 and October 17, 1984. The Sale and Construction Agreement among the City of Boston, the Authority and the Joint Venture with respect to the St. James Garage and related land was approved by the Public Facilities Commission on August 23, 1984 and November 29, 1984, and by the Authority on August 29, 1984. It now remains for the Authority to approve the Development Plan and Development Impact Project Plan for Planned Development Area No. 17 which includes the development. Said Plans, combined into a single document, are attached hereto.

Because the site is located in the Back Bay, the Authority was particularly concerned that there be ongoing review of the project plans by representatives of the community, and invited local residents and business, cultural and political leaders to

participate in forming the St. James Avenue Garage Civic Advisory Committee (the "CAC") to represent the interests and concerns of the Back Bay and adjoining South End communities. On June 8, 1983, the Authority and the CAC entered into a Contract to Insure Community Participation to create a continuous dialogue with the Joint Venture, the Authority and the CAC which would result in a project that would be responsive to public concerns.

The project has undergone over two years of review by the Authority, other agencies of the City of Boston, agencies of the Commonwealth, the CAC and members of the public. Attached hereto is a list of the public hearings held in connection with the project. The two years of public review of the project have resulted in numerous modifications to the envelope and design originally proposed in the fall of 1982. These changes have included a reduction in the height of the tower components from 396 feet to 330 feet, an increase in the separation between the tower components from 40 feet to 60 feet, increases in the setbacks of the project from Boylston Street (15 feet to 25 feet), St. James Avenue (8 feet to 15 feet), Berkeley Street (15 feet to 19 feet), and Clarendon Street (12 feet to 15 feet), a reduction in the floor area ratio from 11.5 to 9.5, enclosure of the loading bays, and alterations in the locations of parking entrances and exitways to minimize traffic impacts.

The project which has emerged from this process will be a mixed-use development consisting of approximately 1,300,000 square feet of office and retail/commercial space located in twin office structures rising from a six-story low-rise base structure covering the entire block except for two courtyards facing Boylston Street. The retail/commercial space will be located on the first two levels of the low-rise base structure and the office space will be located in the rest of the building. Approximately 1,000 parking spaces will be located on three levels below grade, of which a minimum of 625 spaces will be available for public parking with no fewer than 375 spaces designated for tenant use. The floor area ratio will not exceed 9.5, the maximum height will not exceed 87 feet along Boylston Street and 330 feet on the St. James Avenue Garage parcel. A minimum building setback line of 25 feet from the Boylston Street curb, 19 feet from the Berkeley Street curb and 15 feet from the St. James Avenue and Clarendon Street curbs shall be maintained except for minor projections of decorative architectural details. There will be a 60-foot separation between the towers.

The project will provide numerous and significant economic benefits to the City while remaining consistent with the development guidelines established through the review process discussed above. The combined payment for land, including the St. James Avenue Garage site and discontinued street areas, will result in a $7,766,400 payment to the City. In addition, the

project will increase by a factor of ten the tax revenues to the City from the site. It will generate over 3,000 construction jobs and over 4,000 new permanent jobs beyond the estimated 800 jobs on the Boylston Street block today. The provision in the building plans for expansion space for New England Life will assure the retention of the company's operations (and approximately 1,400 permanent jobs) within the City of Boston. The project will also generate approximately $6,000,000 in Development Impact Project Exaction payments for the development of needed low and moderate income housing in the City. Lastly, in addition to the economic benefits to the City in general, the Joint Venture has agreed to fund or partially fund certain public benefits of particular interest to residents of the Back Bay including the redesign and reconstruction of Copley Square, a study of the Back Bay water table, and a study of the Boylston Street fishweir located in the immediate vicinity of the site.

In addition to the economic benefits discussed above, the project will generate less tangible benefits for the City and, more specifically, for the residents of the Back Bay. The project will provide new landscaped pedestrian plazas, retail/commercial establishments, and a first-class office space, which will physically upgrade and assist in the commercial revitalization of the area. The 1,000-space parking garage to be provided in the project will replace the deteriorating and dangerous 625-space St. James Avenue Garage with new, safe, below-grade facilities including 625 public parking spaces and 375 tenant parking spaces.

The said Joint Venture filed an Environmental Notification Form (ENF) and draft and final Environmental Impact Reports (EIRs) with the Massachusetts Executive Office of Environmental Affairs (EOEA) on May 31, 1984, October 15, 1984 and February 15, 1985, respectively. The ENF committed the Joint Venture to complete environmental studies for the Boston Redevelopment Authority. Draft and final EIR's were submitted to the Authority on October 13, 1984 and February 1, 1985, respectively. Based on the Draft and final EIR's prepared for the Boston Redevelopment Authority, the Authority is satisfied that all measures to mitigate possible damage are being seriously considered, and, in appropriate cases, taken by the Joint Venture, and that all potential adverse environmental effects will be minimized.

The development parcel is in a B-8 zoning district. Exceptions will be required for a proposed floor area ratio of 9.5 (already approved by the Authority in the vote of December 8, 1983), deviations from the setback of parapet and off-street loading bay requirements, and for the conditional uses listed in Exhibit II of the attached "Development Plan and Development Impact Project Plan for Planned Development Area No. 17".

Sections 3-1A and 26-3 of the Boston Zoning Code provide that in order to approve a Planned Development Area Development Plan and a Development Impact Project Plan, the Authority must find with respect to the applicable plan "that such plan conforms to the general plan for the city as a whole and that nothing in such plan will be injurious to the neighborhood or otherwise detrimental to the public welfare." The concept of the Planned Development Area zoning designation was adopted in 1968 to provide more flexibility than the Zoning Code then allowed for development projects of significant size while insuring good design by imposing planning and design controls. The Development Impact Project concept was introduced in the fall of 1983 to establish a balance between new real estate development and the low and moderate income housing needs of the City. The staff of the Authority has reviewed the Development Plan, EIR's, Schematic Design submissions and other materials prepared by the Joint Venture. The Authority staff has also played a central role in the review processes undergone by the project since November of 1982 and has seen the introduction of numerous project changes in response to concerns of the City, State and community groups. The Authority staff will subject the project to its design review procedures to assure consistency with the Development Plan/Development Impact Project Plan. The Authority staff has also reviewed and intends to enter into the Cooperation Agreement and the Development Impact Project Agreement with the Joint Venture with respect to the project attached hereto. In view of the above and other circumstances discussed in this memorandum and upon review of other documentation on file with the Authority, we respectfully request the Authority to find that the Development Plan/Development Impact Project Plan for Planned Development Area No. 17 conforms to the general plan for the City as a whole and that nothing in such Plan will be injurious to the neighborhood or otherwise detrimental to the public welfare.

We therefore recommend that the Boston Redevelopment Authority approve the attached Development Plan and Development Impact Project Plan for Planned Development Area No. 17. Appropriate votes follow.

VOTED: That in connection with the Development Plan and Development Impact Project Plan for Planned Development Area No. 17, bounded by Boylston Street, Berkeley Street, St. James Avenue and Clarendon Street, Boston Proper, which was presented at a public hearing duly held at the offices of the Authority on September 27, 1984, and after consideration of the evidence presented at

that hearing and after consideration of the matters discussed in a memorandum from Authority staff to the Authority, dated March 28, 1985 and the documentation on file with the Authority, which evidence, memorandum and documentation are incorporated herein by reference, the Boston Redevelopment Authority finds that said Plan (1) conforms to the general plan for the City of Boston as a whole; (2) contains nothing that will be injurious to the neighborhood or otherwise detrimental to the public welfare; and (3) does adequately and sufficiently satisfy all other criteria and specifications for a Planned Development Area subdistrict designation and for a Development Impact Project Plan as set forth in the Boston Zoning Code as amended;

and further

VOTED: That pursuant to the provisions of Sections 3-1A and 26-3 of the Boston Zoning Code as amended, the Boston Redevelopment Authority hereby approves said "Development Plan and Development Impact Project Plan for Planned Development Area No. 17." Said Plan is embodied in a written document of the aforesaid title, dated September 27, 1984 and revised March 28, 1985, and in a series of schematic drawings listed in Exhibit III of said document. Said document and drawings shall be on file in the office of the Director of Zoning of the Authority;

and further

VOTED: That the Authority hereby authorizes the Director to petition the Zoning Commission of the City of Boston for a Planned Development Area subdistrict designation for the parcel of land which is the subject of the Development Plan and Development Impact Project Plan for Planned Development Area No. 17; to execute in the name and on behalf of the Authority (1) a Cooperation Agreement with the developer of said Planned Development Area concerning the carrying out of said development; and (2) an agreement under which said developer shall be responsible for a Development Impact Project Exaction; and to certify, in the name and on behalf of the Authority, that plans submitted to the Building Commissioner in connection with said Plans are in conformity with said Plans and have been subject to the Authority's design review

procedures, and shall continue to undergo design and environmental review by the Authority, and that the developer has entered into an agreement with the Authority to be responsible for a Development Impact Project Exaction;

and further

VOTED: That in reference to petition(s) to be brought by the Joint Venture of New England Mutual Life Insurance Company and Gerald D. Hines Interests, Inc., for exceptions as listed in the Development Plan and Development Impact Project Plan for Planned Development Area No. 17 which is approved by the Authority today, the Boston Redevelopment Authority recommends approval provided that the Zoning Commission will have adopted a Map Amendment designating the land involved as a B-8-D zoning district, and provided further, that any additional design development and final working drawings be submitted to the Authority for design review approval to ensure that the same are consistent with drawings previously approved by the Authority and with said Plan; and the Authority hereby authorizes the Director to certify to the Board of Appeal that the exceptions requested are in conformity with said Plan.

PUBLIC HEARINGS
500 Boylston Street, Boston

Date	Public Agency	Subject Matter
11-1-82	Real Property Board	Delegation of Authority to BRA
11-16-82	Public Facilities Commission	Delegation of Authority to BRA
11-21-82	Boston Redevelopment Authority	Authorization of advertisement for Development Interest
12-8-83	Boston Redevelopment Authority	Tentative Designation
12-9-83	Real Property Board	Garage declared surplus; Authority delegated to chairman of RPB
12-12-83	Public Facilities Commission	Affirmation of Tentative Designation; Transfer of Garage
12-13-83	Public Improvement Commission	Discontinuances
12-30-83	Public Facilities Commission	Authority to sign Purchase and Sale Agreement
4-3-84	Boston City Council Committee of the Whole	Transfer of Garage to PFC
4-18-84	Boston City Council	Transfer of Garage to PFC
6-20-84	Massachusetts Executive Office of Environmental Affairs	MEPA Scoping Session
7-11-84	Boston Air Pollution Control Commission	Parking freeze

8-23-84	Public Facilities Commission	Authorization to Execute Sale and Construction Agreement
8-29-84	Boston Redevelopment Authority	Approval of Sale and Construction Agreement
9-19-84	Boston City Council Committee of the Whole	Transfer of Discontinued Ways to PFC
9/26/84	Boston City Council Committee of the Whole	Transfer of Discontinued Ways to PFC
9-27-84	Boston Redevelopment Authority	PDA/DIP
10-4-84	Boston Air Pollution Control Commission	Parking Freeze
10-17-84	Boston City Council Committe of the Whole	Transfer of Discontinued Ways to PFC
11-29-84	Public Facilities Commission	Confirmation of Intention to Sell Garage and Discontinued Ways

FACT SHEET

Parcel: The St. James Avenue Garage Parcel is a 137,000-square-foot development parcel (see attached map) which combines two city parcels (St. James Avenue Garage and Providence Street between Berkeley and Clarendon Streets) and previously assembled private parcels of New England Mutual Life Insurance Company along Boylston Street.

Redeveloper: A Joint Venture of New England Mutual Life Insurance Company and Gerald D. Hines Interests, Inc.

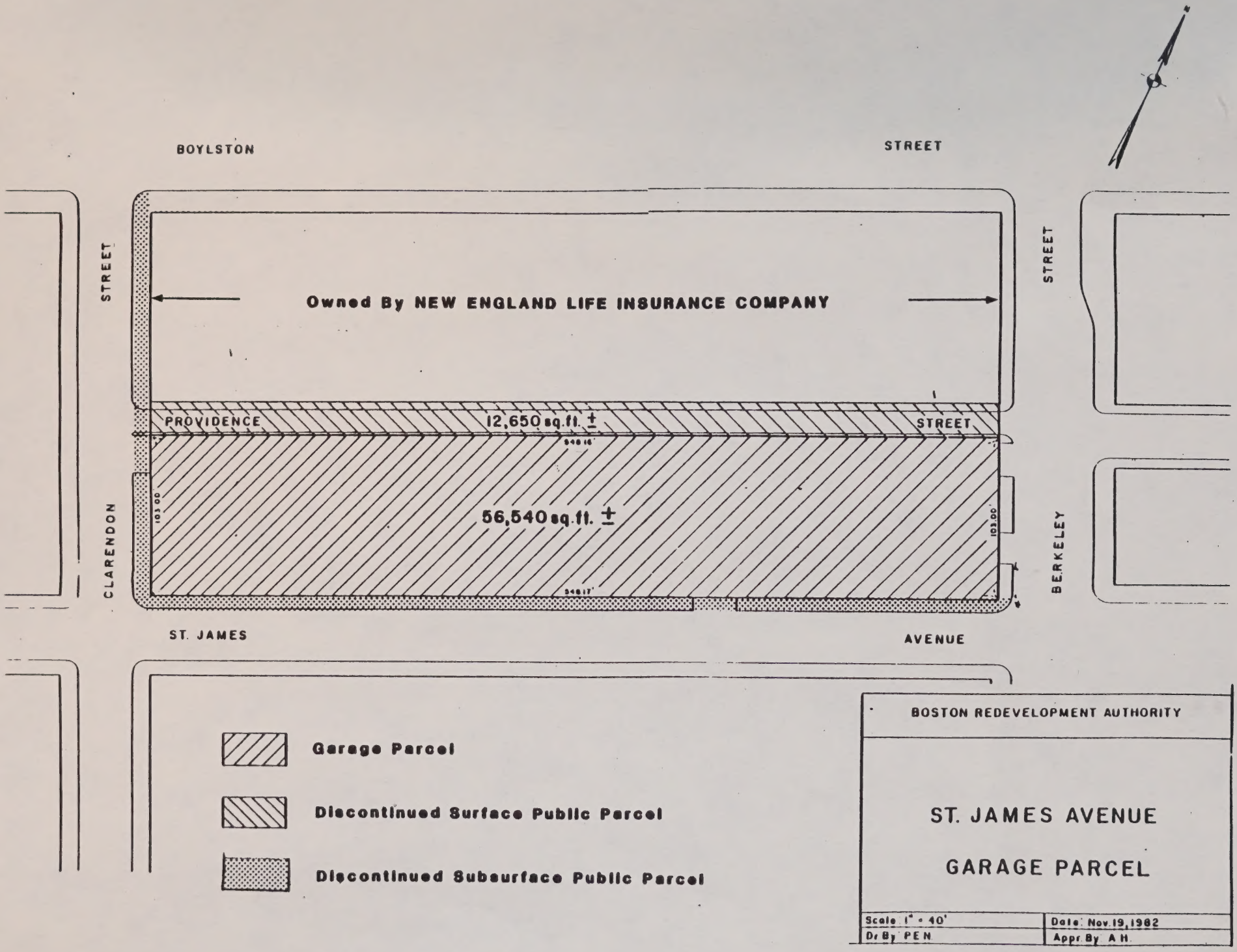
Tentative Designation and Other Public Actions: The Authority, on December 8, 1983, recommended to the City of Boston, acting by and through the Public Facilities Commission, the tentative designation of the Joint Venture (above) as redeveloper of the St. James Avenue Garage Facility and adjoining Providence Street and adjacent private land areas along Boylston Street, with accompanying terms and conditions. Other authorizing public actions have included votes of the Real Property Board on December 9, 1983, with accompanying terms and conditions; the Public Facilities Commission on December 12 and 30, 1983, August 23, 1984, and November 29, 1984, with accompanying terms and conditions; and the Boston City Council on April 18, 1984 and October 17, 1984.

Development Proposal: The development will be a mixed-use development consisting of 1,200,000 square feet of office space with 100,000 square feet of retail space in the first and second floors and approximately 1,000 parking spaces below grade, of which a minimum of 625 spaces will be available as public parking (no fewer than 315 spaces designated for short-term daily use) and 375 spaces designated for tenant use.

Design Restrictions: The maximum F.A.R. will not exceed 9.5 and the maximum height will not exceed 87 feet along Boylston Street and will not exeed 330 feet to the parapet line on the St. James Avenue Garage Parcel. A minimum building setback line of 25 feet along Boylston Street, 19 feet along Berkeley Street, and 15 feet along St. James Avenue and Clarendon Street shall be maintained except for minor projections of decorative architectural details. These setbacks are consistent with historical patterns in the vicinity of the project.

Architect: John Burgee Architects with Philip Johnson, New York, New York.

Financial Information: The total development cost will be approximately $280 million. The combined payment for land area including the garage and discontinued street areas will result in a $7,766,400 payment to the City for land and acquisition costs. In addition, the development will increase by a factor of ten the tax revenue to the City from a site that is presently yielding no more than $625,000. It will generate over 3,000 construction jobs and over 4,000 new permanent jobs beyond the estimated 800 individuals who work on the Boylston Street block today; and the 1,000-space garage will replace the 625-space public garage with new, below-grade public parking spaces to satisfy new and existing transportation needs of the Back Bay.


BOYLSTON
STREET
STREET
Owned By NEW ENGLAND LIFE INSURANCE COMPANY
PROVIDENCE
12,650 sq.ft. ±
STREET
56,540 sq.ft. ±
CLARENDON
STREET
BERKELEY
ST. JAMES
AVENUE
Garage Parcel
Discontinued Surface Public Parcel
Discontinued Subsurface Public Parcel
BOSTON REDEVELOPMENT AUTHORITY
ST. JAMES AVENUE
GARAGE PARCEL
Scale 1" = 40'
Date: Nov. 19, 1982
Dr. By P.E.N.
Appr. By A.H.